DOCKET FILE COPY ORIGINAL

ORIGINAL

RECEIVED

APR 08 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Petition of Bell Atlantic Telephone Companies for Forbearance from Regulation as Dominant Carriers in Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York; Pennsylvania; Rhode Island; Washington, D.C.; Vermont; and Virginia	)	CC Docket No. 99-24

REPLY COMMENTS OF BELL ATLANTIC

Edward D. Young, III
Michael E. Glover
Of Counsel

Edward Shakin
Joseph Dibella

1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4864

Attorneys for the Bell Atlantic telephone companies

April 8, 1999

No. of Copies rec'd 0+4
List ABCDE

TABLE OF CONTENTS

Summary and Introduction

In its petition, Bell Atlantic demonstrated that competitors already are providing competing services, and have facilities in place that allow them to reach customers who account for approximately *90 percent* of the special access services that Bell Atlantic still provides. Bell Atlantic also provided evidence that these are not merely theoretical alternatives, but that significant numbers of customers have already switched to competing carriers– Bell Atlantic studies showed competitors already provide approximately 30 percent of the high capacity special access services in these jurisdictions, and up to 50 percent in key business centers. Bell Atlantic also demonstrated that special access services are especially vulnerable to competitive pressure because demand is concentrated, both with respect to customers – the majority of special access demand comes from just three customers – and with respect to location -- ninety-three percent of Bell Atlantic's special access demand is located in only 20 percent of its wire centers.

While competitors stridently argue that the Commission should continue to hamstring Bell Atlantic's ability to compete, they offer important concessions with new facts supporting Bell Atlantic's petition. For example, AT&T (p. 11) acknowledges that 12% of its special access business goes to competitors with up to 20% in some jurisdictions. Moreover, it concedes (p. 12) that 10% of what it spends for DS3 special access is already going to internal transfer payments to its subsidiary Teleport. While it argues that it is still purchasing Bell Atlantic's discounted special access offerings, this can hardly be considered surprising given AT&T's own admission that as a result of competition, AT&T has seen its unit cost per voice grade equivalent circuit decline by more than 80% since 1990. R. Steven Davis, AT&T Vice President of Law and State Government Affairs, "Price Restructuring in Telecommunications – Best Practices to Implement the Telecommunications Act," at 2, prepared remarks for the New Mexico State University conference on Current Issues Challenging the Regulatory Process (Mar. 9, 1999).

Competitors' complaints that there are entry barriers to serving new customers are belied by the facts of their own rapid growth. Competitive access providers now owned by MCI have increased the number of buildings they serve by 700% in just the past few years. It is now front page news that "major streets are being sliced open by telecommunications companies at an unprecedented rate" in order for competitive phone carriers to install "hundreds of miles of underground fiber-optic cable." Washington Post, "D.C.'s High-Tech Highways Wreaking Havoc on Traffic," A1 (Mar. 21, 1999). Moreover, Bell Atlantic has more than 1000 collocation sites in operation and an even greater number under construction.

Pervasive special access competition is an undeniable reality. Customers recognize that lifting current restrictions will "enable" competition, and thereby "lead to lower prices and more services options." Mariott at 1; GSA at 5. The Act requires forbearance under such circumstances, and the Commission should move quickly in approving Bell Atlantic's petition to make a clear statement that it truly is "pro-competition," -- as it recognized Congress intended -- and not "pro-competitor," favoring new entrants over incumbents. *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* 11 FCC Rcd 15499, ¶ 618 (1996).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Petition of Bell Atlantic Telephone Companies for Forbearance from Regulation as Dominant Carriers in Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York; Pennsylvania; Rhode Island; Washington, D.C.; Vermont; and Virginia	CC Docket No. 99-24

REPLY COMMENTS OF BELL ATLANTIC[1]

As the comments both in support and in opposition to Bell Atlantic's petition make clear, the Commission should grant Bell Atlantic's petition because doing so will unleash market forces to benefit consumers of special access services. Potential customers of Bell Atlantic support forbearance because, while they have competitive alternatives today, customers will continue to be "disadvantaged" and "competitors will have no incentive to put their best deal on the table" until Bell Atlantic is free to compete on the same terms as other carriers. Marriott at 2. In contrast, competitors prefer to keep Bell Atlantic in a regulatory straitjacket for fear that "Bell Atlantic could take advantage

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

of the fact that its competitors do not know its cost of providing special access service" and that it would "set special access prices low, although not necessarily below cost." Time Warner at 22. This is the essence of competition and it is not surprising that other market participants ask the Commission to retain artificial regulatory restraints that would inhibit such competitive activity.

Nevertheless, the Commission has already rejected such protectionist views, and it has found that regulating prices becomes "unnecessary or counterproductive as market forces become operational." *Price Cap Performance Review*, 11 FCC Rcd 858, ¶21 (1995). That is clearly the case for the special access markets in the states covered by Bell Atlantic's petition. Even AT&T acknowledges that competition has already pushed private line (including special access) prices down by 80%. Given the availability of competitive alternatives for approximately 90% of Bell Atlantic's special access demand, the Act's forbearance provisions require the Commission to remove current price regulation.

I. There Are Competitive Alternatives Available For Special Access

As the Chairman has recognized, when customers have a "meaningful choice of service options," "the Commission *must* deregulate these services." Letter from Chairman William E. Kennard, to Hon. Tom Bliley at 20 (Dec. 7, 1998) (emphasis added). Bell Atlantic's petition demonstrated that special access customers have a meaningful choice of suppliers in the states covered by this petition. While competitors to Bell Atlantic's service have opposed relief here, they cannot escape the clear fact that they already are in the market and are offering customers a competitive alternative.

In particular, competitors ask the Commission to focus, not where the demand is – and therefore where they have put in their own facilities and collocated with Bell Atlantic – but rather on the remaining service area. For example KMC (p. 6) argues that "there are more areas in every state where these competitors' facilities do not extend, rather than the other way around" and MCI (p. 11) and AT&T (p. 7) argue that 15% or less of Bell Atlantic's wire centers have collocation. But these arguments ignore the dramatic concentration of special access demand. In deploying their competitive special access facilities, they simply have followed the philosophy of Willie Sutton; they compete in those locations because that is where the demand is. In fact, about 19% of Bell Atlantic wire centers have collocation (ordered or available) and these wire centers account for almost 87% of its special access demand.[2] If anything, the distribution of competitors around every significant concentration of special access customers confirms that competitors will deploy facilities to meet customer demand.

In fact, despite their complaints about impediments, competitors have clearly shown an ability to create networks around business centers, and expand their networks to reach specific customers. To illustrate the point, attached to the Reply Affidavit of Dr. William E. Taylor and Dr. Karl McDermott (attached as Exhibit 1) are maps of downtown Washington, D.C. and Syracuse. N.Y. These maps illustrate that competitors have built their networks to reach concentrations of business customers. The maps also

---

[2] Like almost all of Bell Atlantic's data on competition, this is a conservative number because it only addresses demand that Bell Atlantic has retained. Bell Atlantic has no record of the extent to which customers have moved to other suppliers.

show that competitors will expand facilities beyond their fiber loops to reach special access business customers.

AT&T's experts concede that through competitive alternatives, customers may have "a feasible means of avoiding Bell Atlantic's charges for special access." Declaration of Ordover and Willig at 8 (attached to AT&T Comments). They nonetheless argue that competition is inadequate because customers have no choice in terminating access where the "customer being called chooses the carrier to terminate the call." *Id.* But this argument relates to *switched* access services and has nothing to do with the *special* access services covered by Bell Atlantic's petition. *See* Taylor and McDermott Reply Affidavit, ¶ 34 ("Special access customers pay for both originating and terminating traffic on the point-to-point connection and, therefore, any legitimacy Ordover and Willig's externality argument may have with respect to switched access does not apply to special access").

Several competitors argue that regardless of whether they have facilities near a potential customer, Bell Atlantic should be denied relief because those facilities do not actually reach all the customers in a wire center. But since competitive providers only connect to a building *after* they have won the customer (or where they are otherwise confident they will have sufficient volumes of business), the logic of that argument would retain regulation until Bell Atlantic had lost all of its current customers. This is clearly inconsistent with Commission policy and the public interest.

Competitors also argue that even if the carriers seek to provide service to a broader area, the cost to expand a network to meet a nearby customer is more than the amount quantified by Bell Atlantic because of extra costs, such as entrance fees imposed by building owners. None of the commenters offer substantive evidence to quantify such costs, nor do they suggest that such charges always apply. Even where they may apply, Bell Atlantic also incurs additional cost when it seeks to upgrade a local connection to meet the higher bandwidth needs of a special access customer. Regardless, these costs are not sufficient to deter Bell Atlantic or its competitors from expanding their service reach. For example, according to the FCC Fiber Deployment Update Reports, the number of buildings served by competitive access providers now owned by MCI grew by more than 700% between 1994 and 1997 (from less than 3000 to approximately 25,000 buildings). Every indication is that the pace of growth has only increased. For example, Metro Media has announced plans for 200,000 new fiber miles in the area covered by Bell Atlantic's petition. Taylor and McDermott Reply Affidavit, ¶ 28. Indeed a recent front page story in the Washington Post reported that in Washington, D.C., "major streets are being sliced open by telecommunications companies at an unprecedented rate" in order for competitive phone carriers to install "hundreds of miles of underground fiber-optic cable." Washington Post, "D.C.'s High-Tech Highways Wreaking Havoc on Traffic," A1 (Mar. 21, 1999). Moreover, a recent survey of business telecommunications managers in the region reports that 59% of them have been solicited by, or have already switched to, Bell Atlantic competitors. *See* News Release of National Small Business United (Mar. 23, 1999) (attached as Exhibit 2). Thus, the argument that the cost of expansion has made such growth uneconomic simply ignores the competitive facts.

This growth in competition does not even take into account self-supply by the largest customers of special access -- the major long distance carriers. In its petition Bell Atlantic cited financial analyst reports that confirm that WorldCom — through its previous acquisitions of MFS and Brooks Fiber — will provide MCI with more than 70 percent of its access capacity, and AT&T, through its purchase of TCG, is expected to avoid a significant portion of ILEC access services. Petition at 8. AT&T concedes that it already gets 10% of its high capacity (DS3) services through TCG. AT&T at 12, footnote 18. Moreover, AT&T's experts readily acknowledge the importance of such self-supply, and that "the extent to which interexchange carriers ("IXCs") can vertically integrate and self-supply" special access is "highly relevant." Willig and Ordover at 7.

AT&T tries to distract from these facts by taking issue with the ability of business customers to use new technologies for their own self-supply. AT&T at 7. But AT&T again ignores reality. For example, one of the technologies discounted by AT&T is very small aperture terminal (VSAT) satellite networks, which since 1990 have allowed potential customers to replace special access with a satellite-based system. One provider, Hughes Network Systems, has more than 200,000 terminals in operation. Among its customers with significant operations in the area covered by the petition are the retail outlets of Mail Boxes Etc., Walgreens, Sherwin-Williams, Sheetz Stores and Enterprise Rent-A-Car. *See* excerpts from Hughes Network Systems Internet Postings (attached as Exhibit 3).

AT&T also cites its continued purchase of Bell Atlantic services as evidence that it does not have an alternative.[3] But this proves nothing. Bell Atlantic's term and volume plans offer a high quality low cost option to AT&T, and the fact that AT&T may find it

[3] It is unclear from AT&T's presentation (p. 12) whether its expense for special access includes self-supply by Teleport.

cost effective to continue such purchases for a significant portion of its needs does not demonstrate that AT&T has no other choices.

MCI (p. 11) argues that evidence of collocation is not sufficient to demonstrate a competitive alternative because it primarily occurs at Bell Atlantic's wire centers that directly connect to long distance points of presence and that there is no competition for interoffice traffic. In fact, Bell Atlantic has collocation ordered and available in almost 400 wire centers that are not wire centers directly serving interexchange carrier points of presence. These additional collocation sites reflect competitors' construction of fiber rings that compete directly with Bell Atlantic for inter-office services.

MCI also complains that collocation is an inadequate measure of competition because Bell Atlantic has "bottleneck control" of multiplexing. MCI at 12. This is flatly wrong. There is no space or other limitation that prevents a collocated carrier from installing its own multiplexing equipment in a collocation cage. In fact, more than a third of Bell Atlantic's wire centers with collocation have multiplexing equipment in the collocation facility.[4]

Time Warner complains that Bell Atlantic obstructs access to collocation facilities. *See* Time Warner at 14. In fact, the opposite is true. Bell Atlantic has augmented its workforce and has changed its organizational structure to handle a greater

---

[4] MCI acknowledges that competitors typically "cross-connect to Bell Atlantic facilities at the DS3 level." MCI at 12. To the extent collocated competitors connect Bell Atlantic provided DS1 facilities to their collocation nodes , they must have used multiplexing equipment in the cage to break down the higher capacity DS3 signal to a DS1. Bell Atlantic calculates that approximately 35% of the wire centers identified in the petition as having collocation have this type of arrangement (185 wire centers have collocation with special access DS1s connected divided by 518 collocated wire centers).

workload of collocation requests faster and with a better quality result. Bell Atlantic has implemented several initiatives, such as a centralized database for workforce management, an improved process for submitting collocation applications, changes to its process for funding collocation projects, enhancements to its quality audit process to prevent problems at cage turnover, and the start of a joint quality certification process. While there are occasional problems with delivering collocation arrangements, at year end 1998, Bell Atlantic had provisioned approximately 1000 physical and virtual collocation arrangements that are currently in service throughout its region.[5]

Several competitors attempt to discredit Bell Atlantic's petition by trying to focus on market share as the basis for Bell Atlantic's claim of competition. MCI at 15; Sprint at 7; KMC at 12. This misses the point of Bell Atlantic's petition, which relies on a demonstration that competitive alternatives are present to justify forbearance. As CompTel points out, the Commission should not rely primarily upon market share data that are "subject admittedly to such volatility when assessing an incumbent LEC's market

[5] Time Warner's further allegation that Bell Atlantic-New York's secured cageless collocation offering is not tariffed as ordered by the New York PSC is incorrect. Time Warner is confusing two different service offerings, Bell Atlantic's secured cageless collocation offering is called Secured Collocation Open Physical Environment (SCOPE) which permits a competing carrier to install equipment in a secured area of the central office in as little as 15 square feet of space. This secured cageless service offering is available throughout the Bell Atlantic region subject to the same space restrictions as physical collocation. However, during a collaborative session with the New York PSC, Bell Atlantic agreed to offer a form of cageless physical collocation that requires full time escort by a qualified central office technician. BA filed tariff revisions to provide Collocation Line Of Sight Escort (CLOSE) on December 18, 1998, (currently under review by the Commission) which will be available in all central offices where a request for physical collocation cannot be met. In addition, Bell Atlantic will fully comply with the Commission's recently ordered collocation rule changes. *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* First Report and Order, CC Docket No. 98-147, FCC 99-48 (rel. March 31, 1999).

power." CompTel at 5. Loss of market share is only relevant as further proof that not only are there competitive alternatives present, but competitors are in business and are winning a portion of the market. Thus, the specific percentage loss of market share is not important, so long as some reasonable portion of demand is being won by the competitors present in the market. As a result, AT&T's concession (at 11) that 12% of its special access business goes to competitors supports Bell Atlantic's petition.[6]

In addition, several commenters argue that markets should be measured in terms of revenues rather than actual facilities.[7] But because of the nature of special access services, a measure based on revenues would not allow for an apples to apples comparison of actual losses. Purchases of special access vary greatly depending on the type of facilities purchased, location, term, volume, and contract price. To simply look at total revenues would give an inaccurate picture of the market. Moreover, prices change over time. Such changes undermine the ability to do year-to-year comparisons in market losses based on revenues. As MCI's chairman has explained, "miles of fiber on network

[6] CompTel cites to a Commission decision in which a carrier with 75% market share was found to be dominant on its international private line service. CompTel at 5. But there, the Commission was looking at a market for intersea cables, which because of the substantial cost, have relatively high barriers to entry in comparison to domestic special access. Indeed, key facts underlying the Commission's decision were that there were only three facilities-based international private line carriers on the route and that there had been no new entrants in the last seven years. *Application of KDD America, Inc.*, 11 FCC Rcd 11329, ¶ 16 (1996). This stands in sharp contrast to the multitude of new entrants to the special access market and the accelerating pace of entry in the areas covered by the Bell Atlantic petition.

[7] Competitors cite the Commission's reference to revenues in the AT&T non-dominance order, but that was the market measure relied on by AT&T. Moreover, the long distance market measured by the Commission sells a uniform product without the mix of different technologies and capacities that makes revenue misleading as a measure in the special access market.

no longer should be equated with revenue, which he said is being driven by demand for capacity and aided by declining costs of transport." Communications Daily, "MCI Worldcom Sees Growth in Data Services and Europe," at 6 (Mar. 19, 1999).

Another criticism of using DS1 equivalents as a measure of market size is that because the equivalency ratios for higher capacity services are based on full use, the measure would overweight market share for carriers that sell higher capacity service that may not be fully loaded.[8] *See* MCI at 13; Sprint at 8-9; KMC at 12. But no matter how much use a customer makes of a circuit, it is buying the entire pipe when it purchases a DS3 connection. It would be both impossible and unreasonable to attempt to measure how much traffic is actually flowing over that connection. Since DS1 and DS3 services are substitutable, a consistent measure of capacity – such as DS1 equivalents – is necessary to develop an accurate picture of the market for the combined services. Regardless, according to Sprint, Bell Atlantic has a "disproportionately greater share of high capacity revenues," which, if the competitors' arguments were to be accepted, would indicate that Bell Atlantic's measure of market share is conservative.

Other commenters made arguments that misconstrued Bell Atlantic's supporting evidence. For example, some commenters suggested that the market share data offered by Bell Atlantic included only *retail* competition and ignored the wholesale market. In fact, Bell Atlantic explained that it lost 31.7% of the high capacity market (Taylor and McDermott Initial Affidavit, ¶ 36) and that competitors had captured between 42% and

[8] While competitors argue against using DS1 equivalents as a measure, they readily concede that this measure "makes sense from an engineering standpoint;" and no commenter offers an alternative measure other than a flawed measure based on revenues. *See* Sprint at 8-9.

57% of the overall high capacity special access demand in Bell Atlantic's six largest metropolitan areas (McCullough Affidavit, ¶ 11). In addition, we noted that, "At the retail level, which includes underlying Bell Atlantic facilities that are resold to end users, [competitors] control between 67% and 79% of demand in the major urban markets." *Id.* If Bell Atlantic had relied on its retail market share, we would have noted Bell Atlantic only ***retained*** 31% of the market rather than acknowledging it had ***lost*** 31.7% of the market.

II. Granting Bell Atlantic's Petition Will Lower Prices For Special Access Services

One central benefit of granting Bell Atlantic's petition will be enhanced price competition, not just from Bell Atlantic, but from all competitors in the market. The Commission has recognized that cumbersome price regulations limit competition in at least four ways by: "(1) removing incentives for competitive price discounting; (2) reducing or taking away carriers' ability to make rapid, efficient responses to changes in demand and cost; (3) imposing costs on carriers that attempt to make new offerings; and (4) preventing consumers from seeking out or obtaining service arrangements specifically tailored to their needs." *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd 20730, 20761 (1996).

Customer and competitor comments here confirm these conclusions. For example, Marriott explains that competitive providers "set their prices based upon the existing [Bell Atlantic] tariff price minus a small discount, which is usually only 10 percent." Marriott at 1. As a result, the current regulatory restrictions not only hinder Bell Atlantic's "ability to offer competitive prices," they also act as "a pricing standard" for competitive carriers "to fix the price for services." *Id.* Similarly, GSA (at 4-5) explains the importance of the flexibility sought by Bell Atlantic:

> "To participate effectively in competitive bidding opportunities, carriers must be able to present clear and timely responses to requests for proposals. Moreover, the carrier must be able to submit responses with assurance that regulatory authorities will not subsequently nullify the terms of offers, or place any barriers to the performance of contracts."
>
> *****
>
> "Competitive LECs are not subject to tariff filing requirements. Tariffing rules that apply to Bell Atlantic, but not to its competitors, could potentially affect the company's flexibility in acting quickly in response to requests for proposals. Moreover, tariff requirements on Bell Atlantic may reveal the company's bidding ranges and price strategies to potential competitors. Therefore, GSA urges the Commission to remove the tariffing requirements for these services.
>
> Increased flexibility for Bell Atlantic to participate in competitive bidding for telecommunications services has many benefits. From the standpoint of a government agency inviting bids, a wider response to requests for proposals will lead to lower prices and more service options."[9]

Most revealing, Time Warner highlights its concern that granting flexibility to Bell Atlantic will stimulate further price competition in the market. Bell Atlantic could "set special access prices low, although not necessarily below cost." Time Warner at 22. While Time Warner argues that such pricing will discourage entry, AT&T's experts acknowledge that "technological progress has *reduced* infrastructure costs, especially with regard to fiber optic cable." Willig and Ordover Declaration at 9 (emphasis in

[9] Despite its support for forbearance, GSA nevertheless argues that the Commission should retain price cap limits on special access services. But this argument is inconsistent with GSA's own conclusions. GSA fails to explain how to juxtapose the flexibility -- which it agrees benefits consumers -- with the restrictive price cap rules. In particular, GSA agrees that the company should be able to respond and provide services or combination of services at "rates, terms and conditions" that differ from the general price tariff. GSA at 4. However, retention of a price cap mechanism, which controls rates and requires complex calculations before any modifications are made, places regulatory controls on a process that GSA agrees should be market controlled.

original). As a result, new entrants, who do not have an obligation to offer ubiquitous service, actually have a lower cost base than Bell Atlantic. Thus, rather than deter entry, lower prices will only spur further competition with reduced cost for the consumer.

MCI argues that Bell Atlantic's predictions of increased price competition are misplaced given Bell Atlantic's lack of price movement under current regulations But MCI's premise is just wrong. Prices for Bell Atlantic special access services have, in fact, fallen dramatically. Indeed, outside the context of this proceeding, AT&T has conceded that there have been significant price decreases as a result of competitive pressures:

> [D]edicated access services have been subject to inroads by competitors for several years. Indeed, many of the firms that now offer competitive local services began by offering competitive dedicated access services. *As a result of this competition, AT&T has seen its unit cost per voice grade equivalent circuit decline by more than 80% since 1990.*

R. Steven Davis, AT&T Vice President of Law and State Government Affairs, "Price Restructuring in Telecommunications – Best Practices to Implement the Telecommunications Act," at 2, prepared remarks for the New Mexico State University conference on Current Issues Challenging the Regulatory Process (Mar. 9, 1999) (emphasis added).

MCI makes its claims based on the fact that Bell Atlantic's special access services are priced close to the interstate price cap. But this simplistic comparison misconstrues how price cap regulation works. Bell Atlantic has made significant reductions in two ways that are not reflected in "head room" – the gap between the prices charged and the allowable price cap. First of all, the cap itself has been lowered over the years as a result of annual adjustments – more than 15% in cumulative reductions. Special access prices have fallen even more. For example, since 1991, month-to-month rates for a DS1 (2-4 mile) circuit in New York's zone 1 have fallen 30%. The five year term rates for the same circuit have decreased almost 40%. As a result, it is unreasonable to compare Bell Atlantic's pricing relative to the cap with that of AT&T at the time it sought non-dominance. AT&T had a consistent three percent annual productivity factor, while Bell Atlantic has been required to reduce prices with productivity factors that have grown to six and a half percent.

More fundamentally, Bell Atlantic has created new services that significantly reduce the cost of special access. Attached as Exhibit 4 is a list of these services. As Bell Atlantic has offered higher bandwidth services through new technology such as SONET and fast packet, which reduces the cost of special access capacity. Moreover, it has introduced new pricing options with term and volume discounts that have further decreased the cost to customers. It is these new lower priced services that make up the vast majority of Bell Atlantic's special access demand. Under the Commission's price cap rules, even though these new services offered significant price decreases and quality enhancements for special access customers, when they come into price caps, they provide no headroom. *See* 47 C.F.R. § 61.46(b).

Perversely, AT&T complains that the same term discounts that effectively lowered its cost of special access also serve as a barrier to competition. AT&T at 13; *see also* Time Warner at 13. But this large sophisticated carrier entered into these arrangements with an understanding of the state of current and potential future competition. AT&T goes so far as to complain that it is locked in, even as it takes further advantage of Bell Atlantic term discounts by increasing the amount of special access services that it commits to purchase over the next year under Bell Atlantic's Commitment Discount Plan. AT&T at 12. Given that the largest providers of competitive special access services are now owned by AT&T and MCI, the large long distance carriers were in the best position to balance the opportunity cost of their term commitment with the cost savings associated with lower priced term plans.

In fact, term plans are pro-competitive because they allow carriers to offer discounted rates that might otherwise be uneconomical. Without some reasonable assurance that they will be able to recover their up-front costs and have opportunities to market additional services, carriers would have little incentive to offer discounts from standard tariff rates and to compete as aggressively for a customer's business.

Indeed, these same carriers also take advantage of lower cost term pricing offered by competing carriers. For example, MCI has entered into a five year term arrangement with Hyperion that makes it MCI's "preferred provider" for all dedicated access circuits in areas where Hyperion has its own facilities or is collocated with an incumbent local exchange carrier. Faulkner Telecommunications Company Profile, "Hyperion Telecommunications Company Profile," September 1998.

Moreover, at least under Bell Atlantic's term plan, these carriers are not truly "locked-in." Bell Atlantic's long term contracts already allow a customer to terminate and only pay back the discount it received by committing to a longer term than a month-to-month contract. In other words, a long distance carrier can terminate a contract and be no worse off than if it had not entered the contract in the first place. As a result, the Commission has endorsed such plans, finding that they "reasonably balance the interest of both the [local exchange carriers] and their customers" and that "[c]ustomers will be able to benefit sooner" from competition "without placing an unreasonable burden on the [local exchange carriers], since the [local exchange carriers] will obtain the compensation appropriate for the term actually taken by the customer." *Expanded Interconnection With Local Telephone Company Facilities*, 8 FCC Rcd 7341 (1993) at ¶ 41 (footnotes omitted). AT&T's argument thus comes down to an unwillingness to give up the cost savings it accrued by making its term commitments.

III. Special Access Services Are Subject to Statewide Competition

The comments confirm that Bell Atlantic appropriately sought relief on a state-wide basis. For example, one customer explains that it seeks to contract for all "special access purchases from all of [its] locations throughout the Bell Atlantic region." Marriott at 2. Similarly, Time Warner points out that Bell Atlantic tariffs permit and indeed incent customers "to aggregate" multiple LATAs into a single special access purchase. Time Warner at 7. While Time Warner complains that the petition should have sought broader relief, Bell Atlantic conservatively, did not seek relief for states that did not meet its addressability threshold.[10] Taylor and McDermott Initial Affidavit at ¶ 40.

Other commenters' arguments that the geographic scope of the petition is too broad ignore the actual buying patterns of special access customers. These buying habits allow customers to leverage their buying power from areas where there are many

[10] Time Warner also complains because Bell Atlantic did not include switched access in its petition. As Dr. Taylor and Dr. McDermott explain: "Clearly, the inclusion of switched access as a substitute product for special access in the relevant market does not diminish the alternatives that special access customers have. In fact, it can only increase them. Hence, the recognition of switched access as a substitute for special access can only reduce Bell Atlantic's ability to raise special access prices, irrespective of the market structure for switched access services." Taylor and McDermott Reply Affidavit, ¶ 13.

competitive alternatives to constrain prices for the few purchases where there are not competitive alternatives. As Drs. Taylor and McDermott explain, because there is so little demand in areas that do not have a competitive alternative, buyers have a credible threat to shift suppliers in high competition urban areas if they do not receive satisfactory price and terms for their purchases in rural areas. Taylor and McDermott Reply Affidavit at ¶¶ 7-10. Moreover, smaller rural customers also benefit from this leverage because the largest special access customers -- the big three long distance carriers (who by definition have the greatest leverage) – resell services to smaller customers throughout the states covered by the petition. *Id.* at ¶ 11.

IV. There Is No Cross Subsidy Concern

Many of the objections raised by competitors focus not on the level of competition in the markets covered by Bell Atlantic's petition, but rather on the supposed risk of cross subsidy from access services that would remain under price caps if Bell Atlantic's petition were granted. These arguments ignore the continuing protection of price cap regulation for these remaining services. As the Commission itself has acknowledged, the implementation of price cap regulation severs the "direct link between any improperly shifted costs and regulated basic service prices" thereby undermining the incentive to cross-subsidize. *Computer III Remand Proceedings*, 6 FCC Rcd 174, ¶31 (1990). As Dr. Taylor and Dr. McDermott explain, a price cap regulated carrier has no ability to cross subsidize because such a carrier "cannot raise prices on regulated services to recoup losses on other services, whether regulated or not." Taylor and McDermott Reply Affidavit at ¶ 14.

Incumbent local exchange carriers can have no reasonable expectation of recouping lost profits that they would forgo by under-pricing competitive special access service. The only way to recoup such forgone profits is to charge monopoly prices after eliminating the competition for high capacity special access services. But competition for these services is not going to go away. While smaller competitors argue in this proceeding that they may be driven away, there can be no recoupment unless the major competitors, including financial giants such as AT&T and MCI, are also removed. Because these competitors can not be driven out by temporary efforts to under-price special access, there is nothing to be gained from cross subsidizing special access services and it would be economically irrational to try. Moreover, even if the incumbent local exchange carriers could drive competitors out of the special access market, which they cannot, the fiber installed by those defunct competitors would remain in the ground to be purchased at "firesale" prices by another competitor and operated at a lower capital cost.

A related argument is that Bell Atlantic would somehow degrade its interconnection services in order to advance its own competitive special access services. *See* Sprint at 6. Again, this argument is irrelevant to the question of whether the Commission should forbear price regulation of special access service. Interconnection services will continue to be regulated regardless of Commission action on the petition here. Any service degradation would be easily detected, and any attempt to do so would be self-destructive. *See* Taylor and McDermott Reply Affidavit at ¶ 17.

V. The Commission May Not Defer Action To A Generic Rulemaking

Several competitors argue that the Commission should reject Bell Atlantic's petition in favor of a broader based rulemaking or until benchmarks for local competition are met to their satisfaction. *See, e.g.*, MCI at 3-4; ALTs at 3, 7; Time Warner at 3; Nextlink at 3; KMC at 4; AT&T at 16; Hyperion at 2-3.

The 1996 Act, however, requires the Commission to act on such individual petitions. If a petition for regulatory forbearance meets the statutory criteria, the Commission *must* forbear. 47 U.S.C. § 160 (forbearance provision uses the mandatory "shall" rather than the permissive "may" to describe the Commission's obligation). Moreover, the Act specifically contemplates that forbearance may be applied as narrowly or broadly as a carrier (or several carriers) propose: for a single service or group of services "in any or some of its or their geographic markets." *Id.* It is simply inconsistent with the Act to argue that forbearance that otherwise meets the Act's criteria may be denied to allow the Commission to further "study" the issue in a generic rulemaking or to be held hostage for some ancillary policy objective.[11]

At the same time, the filing of forbearance petitions should not deter the Commission from adopting generic rules that will facilitate future deregulation. The Commission has for some time recognized the need to set a clear framework to allow local exchange carriers the ability to remove services from price regulation once they have met some predetermined competitive threshold. *Price Cap Performance Review*, 12 FCC Rcd 16642, ¶1 (1997). (Commission is seeking a framework to "allow services to be more readily removed from price regulation as warranted by the development of a competitive marketplace"). Such a pre-set framework would obviate the need to resolve

[11] Indeed, the Act provides that if the Commission fails to Act within the specified time limit, the petition is "deemed granted." 47 U.S.C. § 160 (c).

issues raised by the commenters here in piece-meal fashion every time a carrier seeks to remove a service from price regulation.

However, the Commission has been "studying" the issue for more than half a decade without taking any action. In 1993, the Commission recognized that incumbent local exchange carriers are "subject to pricing restrictions that do not affect their competitors," and "as competition develops" the Commission must consider additional flexibility. *Expanded Interconnection with Local Telephone Company Facilities*, 8 FCC Rcd 7374, ¶94 (1993). Indeed, the Commission has long understood that price cap regulatory constraints "tend to become unnecessary or counterproductive as market forces become operational." *Price Cap Performance Review*, 11 FCC Rcd 858, ¶21 (1995). As a result, such regulation should "continue only until competition emerges." *Id.*

While the Commission has recognized the principles that would support removal of these competitive services from price cap regulation, it needs to take the necessary action to make it happen.

AT&T (at 2) makes a related argument that granting the petition would be inconsistent with the Commission's market-based approach to access reform. While a petition that meets the statutory criteria must be granted regardless of prior rulemakings, there is no conflict here because forbearance is perfectly consistent with the Commission's market-based approach. As the Commission understood, the "market-based approach will permit, and indeed, require [the Commission] progressively to deregulate the access charge regime as competition develops." *Access Charge Reform*, 12 FCC Rcd 15982, ¶49 (1997). This is exactly what Bell Atlantic's petition seeks to accomplish.

VI. Bell Atlantic Makes Use of Current Flexibility

The relief sought in Bell Atlantic's forbearance petition would provide Bell Atlantic with significant flexibility that it lacks today. It could price to meet specific customer demand, offer new prices without advance notice, and offer creative price plans without a regulatory proceeding. These freedoms are not new in the marketplace. Bell Atlantic has much of this flexibility on the state level, and the special access providers Bell Atlantic competes against all have these capabilities now.

Incongruously, several commenters argue that Bell Atlantic should be denied this additional relief because it already has sufficient pricing flexibility that it has not fully utilized. AT&T at 17; Sprint at 2; Time Warner at 30; Nextlink at 9. Because the current relief doesn't provide the type of flexibility that Bell Atlantic needs to compete in the market, there is no reason to condition new relief on Bell Atlantic's use of existing freedom. Regardless, Bell Atlantic has made great use of the limited flexibility it has. It differentiates pricing among density zones in all but three of the states covered by the petition. Moreover it maintains up to a 25% rate differential between zones one and three. *See* Exhibit 5, which lists the zone differentials for five year term rates. Similarly, it offers volume and term discounts in these same states, with up to a 65% discount off of month to month rates.

VII. Bell Atlantic's Petition Was Complete

Several of competitors wrongly suggest that despite hundreds of pages of supporting detail behind Bell Atlantic's petition, its filing was inadequately detailed. They are wrong, and their criticisms are based on a misreading of Bell Atlantic's petition. For example, one competitor claims that Bell Atlantic did not define how it determined what wire centers are exposed to competition. KMC at 11. In fact, the McDonnell Affidavit addresses that very point and defines a wire center as exposed to competition when it has a collocated facility or the geographic area served by the wire center is also served by a competitor's facilities. McDonnell Affidavit at 2-3.

Similarly, several commenters complain that Bell Atlantic's description of a sample of competitors included networks that were not yet in service. AT&T at 6; GSA at 8-10 ; RCN at 6. But this information was not the basis for the maps, which were limited to areas where competitors had known "fiber facilities offering special access service." McDonnell Affidavit, ¶ 4. Regardless, even in the descriptions of competitors, Bell Atlantic only included networks that were in service or reasonably close to completion. Given the pace of growth, Bell Atlantic would have been remiss not to include a sampling of these networks under construction. Indeed, of the networks that AT&T lists as not operational, Bell Atlantic has been able to confirm that almost every one of them is in fact operational and currently offering services in competition with Bell Atlantic. *See* chart attached as Exhibit 6.[12]

Finally, several commenters seek clarification as to what services are included in the petition. *See* xDSL Networks at 1-2; KMC at 13; CBS at 4. DSL service, which is not currently under price cap regulation and is a separate technology with different

---

[12] Likewise one commenter complains that Bell Atlantic erred by including "under construction" collocation in its addressability calculations. Network Plus at 4. But the collocation data Bell Atlantic relied on is more than eight months old, and Bell Atlantic has experienced rapid growth in collocation construction since then. In fact, in July of 1998 there were 611 operational collocation sites in Bell Atlantic wire centers with an additional 609 under construction. In December of 1998, operational collocation sites had increased to 1,008 and an additional 1,662 were under construction.

demand characteristics, is not included in the services covered by this petition. While there is significant competition both from other providers of the same service and providers of similar and substitute services, inclusion of DSL as part of this petition may be premature. In contrast, interstate special access video and audio channels are under price caps and are included in this petition. These services are easily replaced by new high-speed digital services. Video and voice compression technology has made it possible to replace analog video services with digital compressed video service, and high quality audio services are easily replaced by digital services that use compression techniques. Regardless of the use specific customers make of the service, these channels are merely data transmissions no different than any other high capacity data transmission. As a result, any of the competitors identified in the petition has the ability, and the presence to offer a competitive alternative.

Conclusion

Bell Atlantic's request for forbearance should be granted.

Respectfully submitted,

Edward Shakin
Joseph DiBella

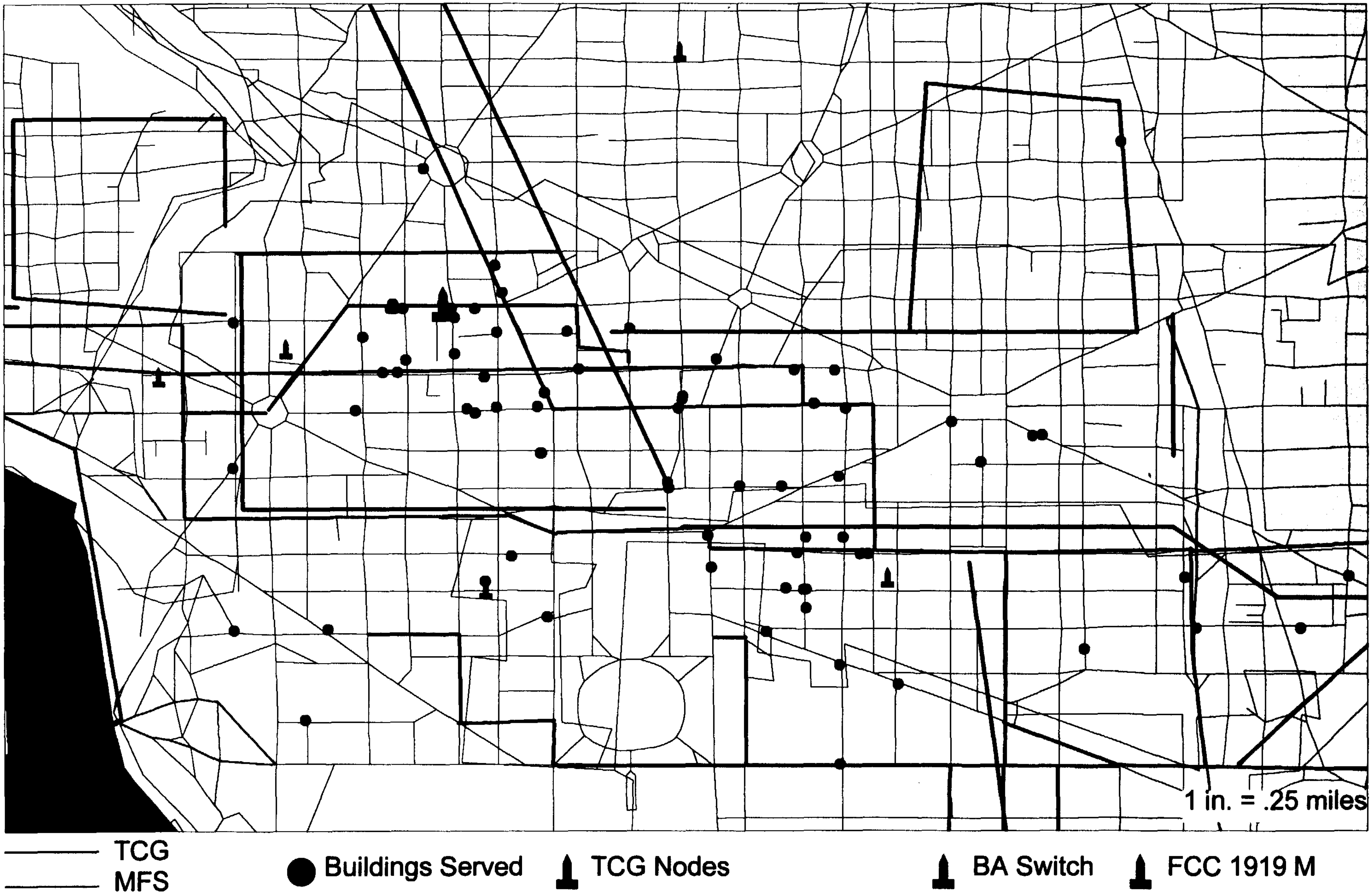
1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4864

Attorneys for the Bell Atlantic telephone companies

Edward D. Young, III
Michael E. Glover
Of Counsel

April 8, 1999

Washington D.C.



Syracuse, New York